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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 770

BERNICE WISE,

Petitioner,

vs.

CITY OF CHICAGO, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

RESPONDENTS' BRIEF IN OPPOSITION

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RESPONDENTS' BRIEF IN OPPOSITION

Opinion of the Court of Appeals

The opinion of the United States Court of Appeals for the Seventh Circuit has been reported in 308 F. 2d 364.

Statutes, Rules, and Ordinances Involved

The statutes, rules, and ordinance provisions involved have been set forth as Appendix X to this brief, and are as follows:

42 U.S.C.A. § 1983.

Rules 5(e), 7(b)(1), 15, and 75(g) of the Federal Rules of Civil Procedure.

Illinois Revised Statutes, 1961, ch. 24, par. 1-2-9; ch. 110, pars. 68.1(3), 76(2), 82(1).

Municipal Code of Chicago, 1939, as amended to January 1, 1962, ch. 24, sec. 24-5.

Question Presented

Does the Federal Civil Rights Act confer a right of action against a City, its Corporation Counsel and an Assistant Corporation Counsel for the performance of their official duties in prosecuting a landlord who is convicted of violating the City's Building Code?

Statement of the Case *

Arthur Wise, the owner of apartment house property was tried, found guilty and fined $1,000.00 in the Municipal Court of Chicago for violating the Chicago Building Code. Three months after being committed pursuant to court order to work out his fine, he died in the House of Correction.

His Administratrix has brought this action under the Federal Civil Rights Act seeking damages against the City of Chicago, and its Corporation Counsel and one of his assistants. The allegations of the Amended Complaint are that defendants brought the deceased before a Court on charges of violating the City Building Code and that the Court convicted deceased and issued the order of commitment referred to above.

While a notice of appeal from the conviction was filed,

* The facts herein are summarized from the Complaint contained in the Appendix (hereinafter cited as App.) filed in the United States Circuit Court of Appeals in this case, and from the Additional Appendix (hereinafter cited as Add. Appx.) filed as a supplement to Appellees' brief in this case in the Circuit Court of Appeals. These appendices have been filed as the Record in this Court. The Appendix to this Brief is cited as Appendix X.

as is stated in the opinion of the United States Circuit Court of Appeals:

> "It is nowhere alleged that the fine was paid, or that notice of appeal was supported by a bond to secure the adverse party, so that the notice of the appeal might operate as a supersedeas pursuant to Illinois Revised Statutes (1961), Ch. 110, par. 82(1)."

The Amended Complaint alleges that the Corporation Counsel's office served notice upon Arthur Wise of a motion for entry of an order for warrant, arrest and commitment due to his failure to pay the fine, that Defendant's counsel appeared in Municipal Court and opposed the motion on the grounds that the Court had lost jurisdiction by virtue of time lapse and the filing of the notice of appeal. It is also alleged in the Amended Complaint that the files were not then in Court, because they were in process of compilation for the Appellate Court; that the Municipal Court Judge stated that the motion could not be heard without the file; that Plaintiff's counsel then left the courtroom; that the Assistant Corporation Counsel then secured the file, brought it into Court, and in the absence of Plaintiff's counsel, procured the entry of the order for warrant, arrest and commitment. This commitment did not prevent Arthur Wise from proceeding with his appeal or from obtaining a supersedeas bond and order from the Illinois Appellate Court. The appeal was voluntarily abandoned and dismissed on January 24, 1961. See *Wise* v. *City of Chicago*, 36 Ill. App. 2d 196, 198, 183 N. E. 2d 538 (1962).

The Petition on pages 6, 7 and 16 states the individual defendants acted "outside the discharge of their official duties." But the Complaint and the Amended Complaint state the opposite, making the allegations that the individual defendants acted "in the due course of" their

"employment" and "acting directly for the City of Chicago."[1] Many other statements and misstatements of fact are made in the Petition which are not alleged in the Complaint, or otherwise set forth in the record, but, the Amended Complaint and record are controlling and defendants will not detail these inaccuracies because they are so numerous and irrelevant to the issue herein.

Contrary to the statement on page 4 of the Petition the District Court *did* allow Plaintiff to file an Amended Complaint (App. 62, 76-77). The order of dismissal applied to the Complaint as Amended (App. 62, 76, 77). The record of the District Court's extensive consideration of this matter over a period of five months is set forth in the Appendix filed in the Circuit Court of Appeals (see especially App. 88-89).

The Circuit Court of Appeals affirmed the dismissal of the Amended Complaint on the grounds that under *Monroe* v. *Pape*, 365 U.S. 167, the City is not within the ambit of the Civil Rights Act and the individual defendants were acting as prosecuting attorneys and as held in *Stift* v. *Lynch*, 267 F. 2d 237, 239 (7th Cir. 1959), "Prosecuting officials are not to be amerced in connection with official prosecutions even though it is alleged that such acts were done maliciously."

II

Reasons For Denying The Writ

A. *A Municipal Corporation Is Not A Person Within The Meaning Of The Civil Rights Act*

This Court in the case of *Monroe* v. *Pape*, 365 U.S. 167, 191, held that a motion to dismiss a complaint brought

[1] Complaint par. 3, (App. 5) par. 4(b) (App. 6), Amended Complaint par. 4, 5(a), 5(b), 6. 6(b), 6(c), 6(d) and 8 (Add. Appx. vii).

under the Civil Rights Act [2] against a municipal corporation was properly granted saying:

> "The response of the Congress to the proposal to make municipalities liable for certain actions brought within federal purview by the Act of April 20, 1871, was so antagonistic that we cannot believe that the word 'person' was used in this particular Act to include them." [3]

This action therefore cannot be maintained against the City of Chicago.

B. *Corporation Counsels When Acting In Their Official Capacity As Prosecutors Of Law Violators Are Immune From Civil Suits Based On Such Prosecutions.*

It is a fundamental principle of the common law antedating the founding of our Country that officials acting as prosecutors of law violators are immune from civil suits arising out of such prosecutions.[4] This principle is based on the necessity that the office of public prosecutor must be administered with courage and independence, without fear of personal consequences. If public prosecutors are to be subjected to personal damage suits for acts undertaken in the performance of their official functions, the proper and effective administration of the duties of their

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[2] 42 U.S.C. § 1983, Appendix X at p. 16.

[3] Footnote 50 at 365 U.S. 191 states that since a municipal corporation is held not a "person" within the meaning of 42 U.S.C. § 1983 any inference to the contrary can no longer be drawn from prior cases. In accord, *Egan v. City of Aurora*, 365 U.S. 514.

[4] 3 BLACKSTONE'S COMMENTARIES 126, ". . . It would be a very great discouragement to the public justice of the kingdom, if prosecutors, who have a tolerable ground of suspicion, were liable to be sued at law whenever their indictments miscarried."

offices would be seriously crippled and curtailed. This fundamental principle was the foundation of the Circuit Court of Appeals decision herein. That decision was in turn based upon a long line of decisions of this Court.

This principle of immunity from civil suit for actions based upon public duties has been applied by this Court to judges and other public officials such as legislators as well as prosecuting attorneys. And though this immunity principle is not expressly stated in the Civil Rights Act, this Court has applied it to actions under the Act as a vital part of the congressional intent. *Tenny* v. *Brandhove*, 341 U.S. 367, 376-379. This rule requiring the reading of commonly understood and applied exemptions into broad statutory language has been stated by this Court in many fields of the law. *Holy Trinity Church* v. *United States*, 143 U.S. 457; *United States* v. *Kirby*, 7 Wall. 482, 486; *United States* v. *American Trucking*, 310 U.S. 534, 542; *Cook* v. *United States*, 288 U.S. 102, 121; *Exploration Co.* v. *United States*, 247 U.S. 435, 449; 50 *Am. Jur. Statutes* § 339, pp. 331-332.

Illustrative decisions by this Court applying the fundamental principle of immunity from civil liability to actions against judges are many and unanimous. In *Alzua* v. *Johnson*, 231 U.S. 105, involving an action against a Philippine Justice, this Court said:

> "• • • we regard it as fundamental that the immunity of the defendant from this suit is the same as that of judges in the United States, which is established beyond dispute. *Bradley* v. *Fisher*, 13 Wall. 335, 20 L.Ed. 646; *Randall* v. *Brigham*, 7 Wall. 523, 19 L.Ed. 285."

The reason for this rule of immunity is set forth in *Bradley* v. *Fisher*, 13 Wall. 335:

> "For it is a general principle of the highest importance to the proper administration of justice that a judicial officer, in exercising the authority vested in him, shall be free to act upon his own convictions, without apprehension of personal consequences to himself. Liability to answer to everyone who might feel himself aggrieved by the action of the judge, would be inconsistent with the possession of this freedom, and would destroy that independence without which no judiciary can be either respectable or useful. • • • Nor can this exemption of the judges from civil liability be affected by the motives with which their judicial acts are performed. The purity of their motives cannot in that way be the subject of judicial inquiry. • • • If civil actions could be maintained in such cases against the judge, because the losing party should see fit to allege in his complaint that the acts of the judge were done with partiality, or maliciously, or corruptly, the protection essential to judicial independence would be entirely swept away. Few persons sufficiently irritated to institute an action against a judge for his judicial acts would hesitate to ascribe any character to the acts which would be essential to the maintenance of the action."

In the case of *Spalding* v. *Vilas*, 161 U.S. 483, this Court held that a public officer is not liable for instituting a prosecution even though he acted with malice and without probable cause provided the matters acted upon were among those generally committed by law to the control and supervision of his office. This common law rule has been affirmed repeatedly by both federal and state courts. *Cooper* v.

O'Connor, 99 F. 2d 135 (D.C. Cir. 1938), cert. den. 304 U.S. 643, rehearings den. 305 U.S. 673, 307 U.S. 651 (United States District Attorney and Assistant District Attorney); *Yaselli* v. *Goff*, 12 F.2d 396 (D.C. Cir. 1926), aff'd. 275 U.S. 502 (Special Assistant to the United States Attorney General); *Arnold* v. *Hubble*, 18 Ky. L. Rep. 947, 38 S.W. 1047 (1897) (City Attorney); *Smith* v. *Parman*, 101 Kan. 115, 165 P. 663 (1917) (City Attorney); *Laughlin* v. *Rosenman*, 163 F.2d 838 (D.C. Cir. 1947) (United States Attorney General and Special Assistant to Attorney General); *Stift* v. *Lynch*, 267 F.2d 237 (7th Cir. 1959) (State's Attorney and Assistant States's Attorney); *Pearson* v. *Reed*, 6 Cal. App. 2d 277, 44 P.2d 592 (1935) (City Prosecutor); *Anderson* v. *Rohrer*, 3 F. Supp. 367 (D. D.C. 1933) (District Attorney); *Laughlin* v. *Garnett*, 138 F.2d 931, cert. den. 322 U.S. 738 (United States Attorney); *Kostal* v. *Stoner*, 292 F.2d 492 (10th Cir. 1961) (State Prosecuting Attorney); *Peckham* v. *Scanlon*, 241 F.2d 761 (7th Cir. 1957) (Assistant States's Attorney); *Rhodes* v. *Houston*, 202 F. Supp. 624 (D. Nebr. 1962) (County Attorney and Attorney General); *Kittler* v. *Kelsch*, 56 N.D. 227, 216 N.W. 898 (1927) (States Attorney); Prosser on Torts, § 109 at 781 (2d Ed. 1955); 27 C.J.S., § 3064 at 732.

In addition to the immunity granted to public prosecutors, like immunity has been afforded to executive, legislative and judicial officers when engaged in carrying out the duties required of their offices. The following cases are merely illustrative of instances of the application of this principle: *Barr* v. *Matteo*, 360 U.S. 564 (Acting Director of the Office of Rent Stabilization); *Spalding* v. *Vilas*, *supra* (Postmaster General); *Tenny* v. *Brandhove*, *supra* (State Legislators); *Bradley* v. *Fisher*, *supra* (Judges); *Alzua* v. *Johnson*, *supra* (Judges); *Lyons* v. *Baker*, 180 F.2d 893 (5th Cir. 1950) (Grand Jury); and *Francis* v. *Grafts*, 203 F.2d 809 (1st Cir. 1953) (Judges).

Of the above cases the following were brought under the Civil Rights Act: *Laughlin* v. *Rosenman; Stift* v. *Lynch* and *Tenny* v. *Brandhove*, and the universal rule was applied.

The California Court of Appeals in *Pearson* v. *Reed*, 6 Cal. App. 2d 277, 44 P. 2d 592 (1935), stated this rule as to public prosecutors in concise language:

> "The office of public prosecutor is one which must be administered with courage and independence. Yet how can this be, if the prosecutor is made subject to suit by those whom he accuses and failed to convict? To allow this would open the way for unlimited harassment and embarrassment of the most conscientious officials by those who would profit thereby. There would be involved in every case the possible consequences of a failure to obtain a conviction. There would always be a question of possible civil action in case the prosecutor saw fit to move dismissal of the case. Not only would the prosecutor himself be subjected to groundless suits, but his deputies likewise would be accused. The apprehension of such consequences would tend toward great uneasiness and toward weakening the fearless and impartial policy which should characterize the administration of this office."

The charges in the Petition that the individual Defendants in prosecuting Plaintiff's husband acted outside the scope of their duties is not in accordance with the Complaint. See *supra*, page 3. The facts clearly refute any possible interpretation supporting such a claim as the public prosecutors here have acted—and can only act—under the applicable statutes and ordinance in Court and pursuant to Court orders. On the facts alleged in all versions of the Complaint this is irrefutable. So the attempt to insert a new charge in the Petition which is not contained in the

Complaint that the public prosecutors did not act within the scope of their official duties is unsupportable factually or legally. This obvious attempt to get around the Circuit Court of Appeals decision herein is without merit.

Finally, it should be pointed out that the Civil Rights Acts were enacted to protect the civil rights of individuals and were not intended to discipline or harass law enforcement officers in the enforcement of the law. *Screws* v. *United States*, 325 U.S. 91. The circumstances of which petitioner complains demonstrate that the acts were performed in the prosecution and decision of matters in a court of competent jurisdiction, where the court had jurisdiction of the subject matter and of the parties and was authorized and empowered to decide the issue presented. The complaint, original or as amended, therefore states no claim upon which relief can be granted under the Civil Rights Act. *Spriggs* v. *Pioneer Carissa Gold Mines, Inc.*, 251 F. 2d 61, 62 (10th Cir. 1957), *cert. denied*, 356 U.S. 950. In *Johnson* v. *Stone*, 268 F. 2d 803 (7th Cir. 1955) the court quoted with approval language from the opinion in *Bottone* v. *Lindsley*, 170 F. 2d 705, 707 (10th Cir. 1948), *cert. denied*, 336 U.S. 944, which is particularly applicable to the circumstances present in the case at bar, as follows (268 F. 2d at 804-05):

> ". . . [T]o make out a cause of action under the civil rights statutes, the state court proceedings must have been a complete nullity, with a purpose to deprive a person of his property without due process of law. To hold otherwise would open the door wide to every aggrieved litigant in a state court proceeding, and set the Federal Courts up as an arbiter of the correctness of every state decision."

Petitioner is by this action attempting to have the Federal Courts substitute their judgment with respect to the charges made in place of the direct and proper appellate procedures which were available to petitioner's decedent in the state reviewing courts, and which were voluntarily abandoned. See *Wise* v. *City of Chicago*, 36 Ill. App. 196, 198, 183 N. E. 2d 538 (1962). Such a procedure would indeed "set the Federal Courts up as an arbiter of the correctness of every state decision," which surely could not have been the intent of the Congress in having enacted the Civil Rights Statutes.

C. *The Complaint As Amended Was Properly Dismissed*

The dissatisfaction of the Plaintiff with the orders of the Municipal Court, the District Court and now the Circuit Court of Appeals is not against Defendants but the courts. The Circuit Court of Appeals found no error by the District Court and it is earnestly submitted this Court will find no errors were committ d by the Circuit Court of Appeals.

Petitioner's contention that the Municipal Court lost jurisdiction to enter the order of commitment by reason of "perfection" of her appeal (Pet. 21), is a misconception of the law of Illinois. Section 76(2) of the Illinois Civil Practice Act, App. X, page 18 *infra*, provides that once a notice of appeal is filed in the Municipal Court, it is "perfected" to the extent only that no other step is jurisdictional and that the appeal may not be dismissed without notice. Under Illinois Law, it is well established that the mere filing of a notice of appeal does not suspend the operation of a judgment pending the appeal in the absence of a supersedeas. *First Nat'l Bank* v. *Road Dist. No. 8*, 389 Ill. 156, 159-60, 68 N.E. 2d 884 (1954); *Casey* v. *McGuire*, 321 Ill. App. 308, 52 N.E. 2d 822 (1944); *People ex. rel. Dilks* v. *Board of Education*, 283 Ill. App. 378, 391 (1936). To have had the notice of appeal operate as a supersedeas, Section

82(1) of the Illinois Civil Practice Act, App. X *infra*, page 18, required that petitioner's decedent give and file a supersedeas bond. This he did not do.

Petitioner seeks to convince this Court that her decedent applied for a supersedeas bond (Pet. 22), an allegation made in her Petition, but not in her complaint, original or as amended. Assuming, however, for the sake of argument, that the decedent had done so, it seems clear that the Appellate Court of Illinois, to which application was allegedly made (Pet. 22), would necessarily have had to consider the entire procedure taken in the Municipal Court leading to decedent's commitment and that it was of the opinion that this procedure was proper. If the application for a supersedeas bond had in fact been made in compliance with the statute, the bond would have had to have been allowed, with the Appellate Court only given the discretion as to fixing the amount and terms thereof. Ill. Rev. Stat. 1961, ch. 110, par. 82(1), App. X *infra* page 18. Further, the City of Chicago had the legal right to enforce the judgment until a supersedeas bond was filed. This Wise did not do. Petitioner's contention that her decedent applied for such a bond is not only *d'hors* the record, but defies both logic and law.

Petitioner's assertion that the Municipal Court was without jurisdiction to enter its order of commitment by reason of Section 68.1(3) of the Illinois Civil Practice Act App. X *infra* page 17, is a further misconception of the law inasmuch as the execution upon a judgment is not a post-trial motion such as is governed by Section 68.1(3).

Petitioner contends in the Amended Complaint that respondents "induced" the Municipal Court trial judge to enter the order of committment which he was without jurisdiction to enter (Add'l App. viii). The issue of the

propriety of that order was the subject matter of petitioner's decedent's appeal to the Illinois Appellate Court, Docket Number 48296, which decedent's Counsel (the same Counsel representing Petitioner here), voluntarily abandoned and which was dismissed on January 24, 1961. See *Wise v. City of Chicago*, 36 Ill. App. 2d 196, 198, 183 N.E. 2d 538 (1962). Having abandoned a direct attack upon this order, Petitioner in this action attempts to attack the judgment and orders of the Municipal Court of Chicago indirectly in the Federal Courts and seeks to avoid the defense of *res adjudicata* and the prohibition against collateral attacks upon judgments. The transparency of Petitioner's tactics and the underlying reasons therefore are patent. The jurisdiction of the Municipal Court of Chicago to enter the order of commitment is clear.

This Court stated in *Conley* v. *Gibson*, 355 U.S. 41, 54, that in appraising the sufficiency of a complaint it follows "the accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." This is just such a case as the petitioner cannot prove any set of facts under her complaint, as amended, which would entitle her to damages against the City or the public prosecutor defendants herein.

The Plaintiff was allowed to file an Amended Complaint herein (App. 76-77, and Add. Appx.), and the extraordinary consideration given by the District Court to the Complaint and Amended Complaint over a 5 month period of time is set forth clearly and at length in the record (App. 77-78, 88-89). This record demonstrates that the District Court gave Petitioner a fair and careful hearing and arrived at a correct decision. The Court of Appeals opinion reveals like care and study of the Amended Complaint. This extensive study by these Courts merely accentuates the facts

quite clearly that all the Corporation Counsel and his assistant did was to perform their official duty by bringing the deceased landlord before the Municipal Court to hear the charges of violation of the Chicago Building Code, and all action against the deceased then and thereafter was pursuant to Court decisions and orders. The Complaint, original or amended, states no claim upon which relief could be granted against these public prosecutor defendants or the City of Chicago as a defendant, and it was therefore properly dismissed.

Conclusion

The decision of the Circuit Court of Appeals was in all respects correct and in accord with the decisions of this Court. There is no conflict of authority, nor any substantial Federal question raised by the Petition herein. The Petition for the Writ of Certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit should therefore be denied.

Respectfully submitted,

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APPENDIX X

I. FEDERAL RULES OF CIVIL PROCEDURE

Rule 5. Service and filing of pleadings and other papers.

. . . .

(e) **Filing with the court defined.** The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk.

Rule 7. Pleadings Allowed; Form of Motions.

. . . .

(b) **Motions and other papers.**

(1) An application to the court for an order shall be by motion which, unless made during a hearing or trial shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

Rule 15. Amended and supplemental pleadings.

(a) **Amendments.** A party may amend his pleading once as a matter of course at any time before a responsive pleadings is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it at any time within 20 days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within

10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

Rule 75. Record on appeal to a Circuit Court of Appeals.

. . . .

(g) **Record to be prepared by clerk—necessary parts.** The clerk of the district court under his hand and the seal of the court, shall transmit to the appellate court a true copy of the matter designated by the parties, but shall always include, whether or not designated, copies of the following: the material pleadings without unnecessary duplication; the verdict or the findings or fact and conclusions of law together with the direction for the entry of judgment thereon; in an action tried without a jury, the master's report, if any; the opinion; the judgment or part thereof appealed from; the notice of appeal with date of filing; the designations or stipulations of the parties as to matter to be included in the record; and any statement by the appellant of the points on which he intends to rely. The matter so certified and transmitted constitutes the record on appeal. The clerk shall transmit with the record on appeal a copy thereof when a copy is required by the rules of the court of appeals. The copy of the transcript filed as provided in subdivision (b) of this rule shall be certified by the clerk as a part of the record on appeal and the clerk may not require an additional copy as a requisite to certification.

II. CIVIL RIGHTS ACT (42 U.S.C.)

Section 1983. **Civil action for deprivation of rights.**

Every person who, under color or any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. R. S. Section 1979.

III. ILLINOIS REVISED STATUTES

Section 1-2-9 (1961) Chapter 24, **Summons—Warrant—Punishment for violation of ordinance.**

In all actions for the violation of any municipal ordinance, the first process shall be a summons or a warrant. A warrant for the arrest of an accused person may issue upon the affidavit of any person that an ordinancee has been violated, and that the person making the complaint has reasonable grounds to believe that the party charged is guilty thereof. Evefy person arrested upon a warrant, without unnecessary delay, shall be taken before the proper officer for trial.

The person upon whom any fine or penalty is imposed, upon the order of the court or magistrate before whom the conviction is had, may be committed to the county jail as provided in Section 11-3-2 or to any place provided by ordinance for the incarceration of offenders until the fine, penalty, and costs are fully paid. No imprisonment, however, shall exceed 6 months for any one offense.

The corporate authorities may provide by ordinance that every committed person shall be required to work at whatever labor his strength permits, within and without the place of incarceration, not to exceed 10 hours each working day. The committed person shall be allowed, exclusive of his board, a credit of 50 cents for each day's work on account of the fine, penalty and costs.

Section 68.3 (1961) Chapter 110, **Motions after decree or judgment in non-jury cases.**

(1) In chancery cases and in cases at law tried without a jury, any party may, within 30 days after the entry of the degree or judgment, file a motion for a rehearing, or a retrial, or modification of the decree or judgment or to vacate the decree or judgment or for other relief. Neither the filing of nor the failure to file a motion under this section limits the scope of review.

Section 76(2) (1961) Chapter 110, **Limitation of review—Perfection of appeal.**

(2) An appeal is perfected when the notice of appeal is filed in the lower court. After being perfected no appeal shall be dismissed without notice, and no step other than that by which the appeal is perfected is jurisdictional.

Section 82(1) (1961) Chapter 110, **Appeal—Supersedeas—Bond—Stay and recall of mandate.**

(1) An appeal to the Appellate or Supreme Court operates as a supersedeas only if and when the appellant, after notice, gives and files a bond in a reasonable amount, to secure the adverse party. If the bond is given before the record is filed in the reviewing court, the amount and terms thereof shall be fixed and the security approved by the trial judge or his successor, or where that is impossible because of his absence from the district, sickness or other disability then by any other judge of the court, and the bond shall be filed in that court. If the bond is given after the record is filed in the reviewing court, the amount and terms thereof shall be fixed and the security approved by the reviewing court or any judge thereof in vacation, and the bond shall be filed in the reviewing court. If the appeal is from a judgment or decree for the recovery of money, the condition of the bond shall be for prosecution of the appeal and the payment of the judgment, interest, damages and costs in case the judgment is affirmed. In all other cases the condition shall be fixed with reference to the character of the judgment, order or decree appealed from. After the record is filed in the reviewing court, that court or any judge thereof in vacation upon motion may change the amount or terms or the security of the bond whether fixed by it or by the trial judge, and failure to comply with the order of the reviewing court or judge shall terminate the supersedeas. If notice of appeal is filed within 20 days after the entry of the order, determination, decision, judgment or decree complained of, and if bond is given, filed and approved within 30 days after the

entry, or within any further extended time allowed by the trial or reviewing court within the 30 day period or any extensions thereof, the notice of appeal, upon the approval of the bond, operates as a supersedeas. Unless the parties so stipulate no single extension or aggregate of extensions by the trial court shall exceed 45 days. After the expiration of the 30 day period or proper extensions thereof, no appeal operates as a supersedeas except upon order of the reviewing court or a judge thereof in vacation.

IV. MUNICIPAL CODE OF CHICAGO AS AMENDED

Section 24 5.- It shall be the duty of said superintendent to receive into the house of correction such persons as may be committed thereto by any court or magistrate in the county authorized to commit prisoners to such house of correction by the laws of the state or by any ordinance of the city, or any town or village in the county having a contract with the city for the care of its prisoners, and to put each of such persons so committed as are able to labor to the work which they are respectively best able to do, not to exceed eight hours for each working day.

The superintendent shall also receive into said house of correction any person who may be sentenced or committed thereto by any court or magistrate in and of the county, when such commitment is for a time not less than thirty days, under any agreement to that effect between the city and the board of commissioners of the county.